

**New Fairfield Zoning Board of Appeals
New Fairfield Connecticut 06812
MINUTES
April 16, 2009**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday April 16, 2009 in the New Fairfield Free Public Library. Secretary, Laurie Busse, took the minutes.

ZBA members in attendance: John Day, Chair, Maureen Walker, Vice Chair, John Apple, Jack Michinko, and Bob Jano;

ZBA members absent: Joe DePaul and Michelle Rhyce

Town Officials in attendance: Maria Horowitz, CZEO

Chair John Day called the meeting to order at 7:00pm introduced the Board members and explained the meeting process and voting procedures for tonight's meeting.

Secretary Laurie Busse read the proposed agenda for the meeting. John Day made a motion to add to the Agenda a discussion on the proposed new zoning regulations and adopt the Agenda as amended duly 2nd, approved unanimously. Secretary, Laurie Busse, read the Call of the Meeting.

Appeal # 12-09: Thomas and Janet Gibbons, 5 Glen Way to appeal a Verification of Non-Compliance issued by the Zoning Enforcement Officer.

Jack Machinko made a motion to bring Appeal # 12-09 to the floor, duly 2nd, approved 5-0.

Janet Gibbons and her attorney Neil Marcus approached the Board. Neil Marcus explained the applicants appeared before the Board last April with Application # 01-08 requesting a 2nd story addition, which was denied and has an appeal pending. Neil Marcus read a letter he wrote to Maria Horowitz, CZEO dated 1/27/2009 into the meeting. This letter requested a zoning permit be issued. Maria Horowitz issued a letter of noncompliance instead of a zoning permit. They are not requesting a variance but are appealing Maria Horowitz's letter of noncompliance as they feel the 2nd story addition does not violate any zoning regulations. The Gibbons still plan to continue with a 2nd story addition, but have revised their plans so that the roofline will run in a front to back direction instead of a left to right direction. Zoning regulation 2.3.1a was read into the meeting and discussed. The setbacks will change as follows:

<u>Existing</u>	<u>Proposed</u>
Front Setback 24'	Front Setback 25.49'
Side Setback 19.3'	Side Setback 21.13'
Rear Setback 19.7'	Rear Setback 20.46'

Attorney Marcus pointed out the side setback would go from nonconforming to conforming and the front and rear setbacks would become more conforming. This is due to the removal of decks and the reduction in the size of the overhangs. Therefore they

are in compliance with zoning regulation 2.3.1a. Zoning regulations 2.4.3a&b were read into the meeting and discussed. Attorney Marcus stated since the building is becoming more conforming they meet the requirements of those zoning regulations. The height of the building will be 30' and a height variance is not required. Attorney Marcus read a letter he wrote to John Day in April of 2008 regarding the Hotchkiss Application.

Attorney Marcus submitted transcripts into the record and cited cases as follows:

Doyen v. Town of Essex ZBA: Doyen court ruled that a footprint with a preexisting nonconformity you can build on. You don't need a Variance to go up on an existing footprint. Pgs 607 and 608

Raymond v. Norwalk ZBA: appellate court case. Raymond case sites Doyen case stating it is good law.

Attorney Marcus stated other Towns' zoning regulations state you cannot expand vertically on a nonconforming lot without a variance; however New Fairfield's zoning regulations do not state that. Discussion followed, if this were so variances would not be required not only for vertical expansions but any expansion that did not increase nonconformity and the property owner can proceed as a matter of right. With respect to any impact on the neighbors' lake views, Attorney Marcus stated that the laws in Connecticut do not establish any rights of views; protection is within the building height requirements. Discussion followed.

John Day asked for any public comment –as follows:

Robert and Donna Rondono, 8 Glen Way and Attorney Richard Smith approached the Board. Attorney Smith stated his clients oppose this application as it will block their view of the lake. Attorney Smith read zoning regulation 1.1 and 1.2 into the record. Discussion followed. Photos of the Gibbons' home taken from the view of the Rondono's home were submitted into the record. The photos outlined where the top of the 2nd story addition would be, noting the drawings do not take into account the now proposed change of direction in the roofline. Attorney Smith cited cases as follows:

Monroe v. Branford ZBA found at the Appellate Court 75 Connecticut Appeals 796: This is a 2003 case. In this case the ZEO granted a zoning permit for the vertical expansion on a nonconforming garage. The neighbors felt the permit should not have been granted without a variance and appealed the ZEO's decision via the Branford ZBA. The Branford ZBA upheld the ZEO's decision. The appellate court overturned the ZBA's decision stating the addition of the 2nd story substantially increased nonconformity.

Moon v. Madison ZBA 206 Westlaw 76216: This is a 2006 case. The owner applied for a variance for a 2nd story addition on a nonconforming building, but stayed within the original footprint. The ZBA denied the variance. The owner then applied for a building permit and was denied by the ZEO. The ZEO's decision was upheld on appeal to the ZBA. The applicants then took their appeal to the superior court. The judge reviewed the Madison zoning regulations and upheld the ZBA's decision.

Attorney Smith explained the Gibbons' home is within 100' of the Rondono's home. The expansion of the 2nd story addition will obstruct their view of the lake, thus decreasing their property value. In addition to monetary losses his clients enjoy views of the lake and the dock and it allows them to see where their children are. Attorney Smith stated there are outstanding violations on this home and work is being done without permits.

John Day asked for any further public comment—none heard. John Day asked for comments from Maria Horowitz, Zoning Enforcement Officer. Maria Horowitz approached the Board. The applicants do not meet zoning regulations for the expansion or alteration of a dwelling on a nonconforming lot, noting the applicants want to raise the roof and add a 2nd story bedroom; it is not just replacing and maintaining the roof as Attorney Marcus claims. She agreed Attorney Marcus is correct in stating his clients are in compliance with zoning regulations 2.3.1a. However, they are not in compliance with zoning regulations 2.3.1e which refers to Developed Lots and 3.2.7. These zoning regulations were read into the meeting. Zoning regulation 4.2b which refers to zoning permit requirements was read into the meeting and discussed. A lengthy discussion followed all variances are subject to the plans as submitted. Since a variance is not being requested and if the Board was to over turn Maria Horowitz's decision then the proposal in front of the Board would not be legally binding and the applicants can in fact change the direction of the roofline to go from left to right instead of front to back and or increase the height of the roof to 35'. Further discussion followed.

John Day made a motion to take a 10 minute break, duly 2nd, approved 5-0.

Back from the break John Day stated he had a discussion with both parties' counsel limited to the issue of should the Board vote on the merits tonight what the form of the motion should be. The form of the motion will be: "Under the facts in the record should a certificate of noncompliance be the procedure applied?" Attorney Marcus had a legal question. The question is: "Is the interpretation of this section of the regulations, whether the way you have traditionally done it via a variance is correct or whether the applicant's proposal is correct? To that extent since we have one appeal pending and we have an Order to Show Cause in 2 weeks if the Board wanted to consult with counsel and figure out whether or not there's away to resolve all the issues in these cases in the context of what is before us this evening that would be OK with him. Attorney Smith stated if the Board should consult with Town Counsel, then he would like the Town Counsel's response in the public session so that he is given an opportunity to respond. The consensus of the Board is to seek Town Counsels opinion. John Day made a motion to continue the application to the May 21, 2009 meeting, duly 2nd, approved 5-0.

Proposed New Zoning Regulations

There is a joint workshop with the Zoning Commission, ZBA, Planning Commission and Inland/Wetlands Commission on Tuesday April 28 to discuss the changes that were made to the proposed new zoning regulations. Everyone from the Board is encouraged to read through the regulations that were emailed to them and give any opinions they have, making clear such opinions are their individual views, not those of the ZBA as a Board. If they cannot attend the workshop their thoughts can be sent in to the Zoning Commission and will be read into the record. Some of the Board members discussed the changes they saw. After the workshop the next steps for the proposed zoning regulations are referrals by the Planning Commission and HVCEO and then to a public hearing.

Bob Jano made a motion to adjourn the meeting at 9:25pm July 2nd approved unanimously.